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**U.S. DISTRICT COURT  
FOR THE  
DISTRICT OF NEVADA**

NML CAPITAL, LTD.,

Plaintiff,

vs.

THE REPUBLIC OF ARGENTINA,

Defendant.

2:14-cv-00492-JAD-VCF

**NON-PARTIES MF CORPORATE  
SERVICES (NEVADA) LIMITED  
AND PATRICIA AMUNATEGUI'S  
MOTION TO QUASH SUBPOENAS  
AND/OR FOR PROTECTIVE ORDER**

Pursuant to Rule 45(d)(3) of the Federal Rules of Civil Procedure, M.F. Corporate Services (Nevada) Limited ("MF Nevada") and Patricia Amunategui ("Amunategui"), both non-parties to this proceeding, through undersigned counsel, hereby move this Court to quash the subpoenas served against them in this case by NML Capital, Ltd. ("NML") and/or provide a protective order limiting those subpoenas and awarding fees and costs.

This Motion is made and based on the Memorandum of Points and Authorities, the Exhibits attached hereto, the Affidavit of Kent P. Woods, submitted in compliance with Local Rule 26-7 and filed concurrently herewith, and any oral argument requested by this Court.

1 DATED this 10<sup>th</sup> day of July, 2014.

2 WOODS ERICKSON & WHITAKER LLP

3  
4 By: /s/ Kent P. Woods

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10 *Services (Nevada) Ltd. and Patricia*  
11 *Amunategui*  
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**Preliminary Statement**

1  
2 NML Capital, Ltd. is abusing its subpoena power in this case. Despite that they are not  
3 parties to the underlying litigation, MF Nevada—a commercial resident agent service—and its  
4 only employee—Amunategui—have been subjected to a total of three subpoenas. For  
5 approximately one year, MF Nevada has responded in good faith to NML’s previous requests,  
6 supplying thousands of pages of responsive documents, despite the strain on its time and  
7 resources. Moreover, MF Nevada and its employee have for almost a year continued to respond  
8 to informal discovery requests and requests for information from NML. The only response by  
9 NML has been to demand still more documents and depositions from MF Nevada and its  
10 employee. These actions violate Rule 45(d) of the Federal Rules of Civil Procedure, which  
11 require a party or attorney responsible for issuing and serving a subpoena to take reasonable  
12 steps to avoid imposing undue burden.  
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15 Given the history in this case, and given the results of the meet and confer sessions that  
16 have occurred, it is clear that this Court will need to issue an order to protect MF Nevada and its  
17 employee in this matter. MF Nevada wants to fulfill its obligations under the law and indeed has  
18 done so for approximately one year in this matter. NML’s conduct thus far indicates that it will  
19 neither tailor its requests nor agree to reasonable accommodations, nor will they desist from  
20 further subpoenas until this Court issues some protection. This Motion merely requests that this  
21 Court issue such protection.  
22

23 The Court should quash the subpoenas issued on MF Nevada and its employee.  
24 Alternatively, this Court should issue a protective order limiting the scope of the subpoenas to  
25 reduce the burden on MF Nevada and should order NML to pay MF Nevada its reasonable  
26 expenses and attorney fees incurred in complying with the subpoenas and in bringing this  
27 Motion.  
28

### Summary of Relevant Facts

1  
2 1. MF Nevada is a commercial resident agent service that operates out of Las Vegas,  
3 Nevada. Amunategui is its general manager and sole operating employee. *See* Declaration of  
4 Patricia Amunategui (the “Amunategui Declaration”) at ¶ 4.

5  
6 2. On or about August 23, 2013, MF Nevada was served with a Subpoena to Testify  
7 at a Deposition or to Produce Documents in a Civil Action (the “Original Subpoena”). *See*  
8 Declaration of Kent P. Woods (the “Woods Declaration”) at ¶ 3, Exhibit A. The Original  
9 Subpoena contained fifteen pages of requests and instructions and requested documents relating  
10 to 138 separate entities for which MF Nevada serves or previously served as resident agent, as  
11 well as communications and records for an additional twenty-six entities with which MF Nevada  
12 has no relationship. *See id.*

13  
14 3. The Original Subpoena provided that “[i]n lieu of appearing” for a deposition,  
15 “the Custodian of Records [could] produce documents . . . accompanied by a completed and  
16 signed Affidavit of Custodian of Records.” *See* Original Subpoena at Exhibit A, p. 1.

17  
18 4. Relying on this language, MF Nevada attempted to comply in good faith to the  
19 Original Subpoena. MF Nevada submitted limited, tailored objections to the form required for  
20 production and simultaneously produced thousands of pages of responsive documents  
21 encompassing the entirety of its files with respect to the named entities. *See* Woods Declaration  
22 at ¶ 4, Exhibit B; Amunategui Declaration at ¶ 5. In order to do so, MF Nevada enlisted the  
23 services of its own employee, Amunategui, and employed an outside contractor to assist with  
24 scanning and production of the documents. *See id.* MF Nevada also submitted an Affidavit in  
25 the form specified by the Original Subpoena. *See id.*

26  
27 5. Over the ensuing months, MF Nevada responded to additional questions and  
28 document requests from NML’s counsel, including inquiries about its business practices, its files,

1 and its relationships with other entities. During these discussions, NML's counsel identified  
2 several entities for which pages or portions of documents appeared to be missing. MF Nevada  
3 caused its personnel to review the files in question and indicated that it did not have further  
4 responsive documents but noted to NML's counsel that certain of the documents requested had  
5 actually been included in the original production set. *See* Woods Declaration at ¶¶ 4-11.

6  
7 6. Beginning in approximately March of 2014, NML requested that MF Nevada, in  
8 addition to its compliance with the Original Subpoena, submit to a deposition. MF Nevada  
9 declined to do so primarily on the grounds that it had already complied with the Original  
10 Subpoena and, further, that submitting to a deposition would cause it to lose the productivity of  
11 its only operating employee, Amunategui, and that a deposition would cause the company to  
12 incur substantial expense in the form of legal fees and lost productivity. However, MF Nevada  
13 offered that it would continue to supply information through informal discovery. By way of  
14 example, MF Nevada offered to respond to questionnaires, submit to a written deposition  
15 governed by applicable Federal Rules, respond to interrogatories, or offer affidavits in response  
16 to questions from NML. In fact, the only discovery device it refused to agree to endure was a  
17 deposition of essentially unlimited scope and duration. MF Nevada offered to agree to a limited  
18 deposition if NML would reimburse MF Nevada for its time, lost productivity, and attorney fees.  
19 Ultimately, the parties were unable to come to terms. *See* Woods Declaration at ¶¶ 12-19.

20  
21  
22 7. Nevertheless, despite all of MF Nevada's efforts to comply with the Original  
23 Subpoena, despite months of informal discussions and exchanges of information, and despite  
24 assurances that MF Nevada would continue to provide information informally, NML served two  
25 additional subpoenas. First, on or about June 20, 2014, NML served a subpoena on MF Nevada  
26 "as Agent for Mossack Fonseca & Co" (the "New MF Subpoena"). Second, on June 23, 2014,  
27  
28

1 NML served a subpoena on MF Nevada's general manager, Ms. Amunategui, personally (the  
2 "Amunategui Subpoena"). *See* Woods Declaration at ¶¶ 20, 23, Exhibits D, F.

3 8. The New MF Subpoena and the Amunategui Subpoena grossly expand the  
4 breadth of the Original Subpoena. The New MF Subpoena and the Amunategui Subpoena  
5 contain approximately twenty pages of requests and instructions and demand documents  
6 regarding 253 entities for which MF Nevada serves or previously served as resident agent, as  
7 well as personal employment contracts and internal documents of MF Nevada. *See* Woods  
8 Declaration at Exhibits D & F. In fact, upon preliminary review, this subpoena appears to  
9 request documents related to all or substantially all entities that MF Nevada has ever been  
10 involved in incorporating or for which it has acted as resident agent, without inquiry or regard as  
11 to whether they are the least bit related to the underlying issues in this litigation. *See* Amunategui  
12 Declaration at ¶ 6. Additionally, they request documents regarding twenty-seven unaffiliated  
13 entities and twenty-three individuals, as well as internal documents governing MF Nevada's  
14 relationship with its clients and employees. *See* Woods Declaration at Exhibits D & F.

15 9. During an attempt to meet and confer about these issues, counsel for NML was  
16 asked whether it would be willing to curtail its requests to the documents that were actually  
17 important, rather than subject MF Nevada and Ms. Amunategui to needless expense and burden.  
18 When asked, counsel for NML explained that it was impossible to determine which documents  
19 were important until they had all been produced. *See* Woods Declaration at ¶ 26.

20 10. Further complicating matters, the New MF Subpoena states that it was served on  
21 MF Nevada "as Agent for Mossack Fonseca & Co.," a law firm located in the Republic of  
22 Panama. MF Nevada has informed NML that it is not an agent authorized to accept service of  
23 process for Mossack Fonseca, nor is it a general or managing agent such that it can be required to  
24 accept service of process for Mossack Fonseca. It has also supplied information concerning its  
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1 relationship to Mossack Fonseca: that it is an independent contractor and service provider to the  
2 law firm. It is unclear from the face of the New MF Subpoena whether and to what extent any  
3 action is required by MF Nevada, or whether this is merely an attempt to circumvent foreign  
4 conventions and practices for serving subpoenas on foreign entities. Upon inquiry to NML's  
5 counsel during an attempt to meet and confer on this matter, counsel for NML collectively  
6 disclaimed responsibility for the New MF Subpoena and declined to respond either affirmatively  
7 or negatively to this rather simple request for clarification. *See Woods Declaration at ¶ 25.*

9       11. In order to comply with the New MF Subpoena and/or the Amunategui Subpoena,  
10 MF Nevada estimates that it will incur approximately \$20,000 of expenses and costs, including  
11 fees for outside contractors to scan and produce documents, fees for temporary employees to  
12 assist in the efforts, and lost productivity caused by the absence of its general manager, Ms.  
13 Amunategui. This figure is derived by reference to the fees and expenses incurred in complying  
14 with the Original Subpoena. This is in addition to the legal fees that will be necessary to review  
15 documents for privilege or confidentiality concerns, and to prepare and defend Ms. Amunategui  
16 at any deposition. In total, Ms. Amunategui estimates that the cost to respond to the New MF  
17 Subpoena and the Amunategui Subpoena will cost in excess of \$25,000. *See Amunategui*  
18 *Declaration at ¶ 5-6.*

21       12. As a precautionary measure, MF Nevada and Amunategui have objected to the  
22 scope and breadth of the Subpoenas. *See Woods Declaration at ¶ 30, Exhibit H.* As indicated  
23 above, however, further action by this Court is required to resolve issues regarding the New MF  
24 Subpoena and the Amunategui Subpoena; hence the present Motion.

### 26                   **Relief Requested**

27       13. By this Motion, MF Nevada and Amunategui request that this Court enter an  
28 order quashing the New MF Subpoena and the Amunategui Subpoena and protecting MF

1 Nevada and/or its employees from further interference by NML. Alternatively, MF Nevada and  
2 Amunategui request that this Court issue a protective order restricting the scope and reach of the  
3 documents sought by the Subpoena and limiting or eliminating any deposition requirement.  
4 Additionally, MF Nevada and Amunategui request that this Court order NML to compensate it  
5 for its lost productivity, expenses, and legal fees arising from any compliance this Court shall  
6 direct. Finally, this Motion asks this Court for an award of attorney fees related to bringing this  
7 Motion, given that MF Nevada and Amunategui are non-parties, and the subpoenas are facially  
8 overbroad and violate Rule 45's mandate that NML avoid unduly burdening non-parties.  
9

#### 10 **Argument**

11 14. Neither MF Nevada nor Amunategui is a party to the underlying action. Neither  
12 has any direct interest in its outcome whatsoever. The New MF Subpoena and the Amunategui  
13 Subpoena would be unduly burdensome even if issued against a party. Because they were issued  
14 against a non-party, they are unreasonably burdensome and should therefore either be quashed in  
15 their entireties or dramatically limited. Additionally, given the scope of the documents sought  
16 and concerns for Ms. Amunategui's health as she recovers from injury, the subpoenas do not  
17 permit appropriate time to comply. Furthermore, they request information that is personal and  
18 confidential, with regard to MF Nevada and its relationship with its employees and clients.  
19 Lastly, the Subpoenas improperly seek to conflate MF Nevada with the law firm of Mossack  
20 Fonseca & Co., in violation of applicable rules. In doing so, the Subpoenas ask this Court to  
21 ignore rules and international agreements governing service of subpoenas on foreign entities, as  
22 well as the clear mandates of the Federal Rules. The Subpoenas should be quashed on these  
23 grounds.  
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**1. The Subpoenas Place Undue Burden and Expense on MF Nevada and Amunategui to Comply**

15. Under Rule 45 of the Federal Rules of Civil Procedure, this Court “*must* quash or limit any subpoena that (i) fails to allow a reasonable time to comply; . . . (iii) requires disclosure of privileged or other protected matter . . . ; or (iv) subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A) (emphasis added). Moreover, this Court has the power to modify a subpoena and limit the scope of permissible discovery under circumstances involving annoyance, embarrassment, oppression, or undue burden or expense. *See* Fed. R. Civ. P. 26(c) (court may grant a protective order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense); *see also First National Bank v. Cities Serv. Co.*, 391 U.S. 253 (affirming denial of discovery given that “additional discovery would be a fishing expedition and constitute harassment”).

16. Discovery efforts in this case have already proved a substantial burden to MF Nevada and its employee. In responding to the Original Subpoena, MF Nevada estimates that its employee spent approximately forty hours of time sifting through documents, resulting in lost time and productivity. Moreover, it was forced to hire outside contractors to assist in the document production efforts, at a cost of approximately \$4,000, in addition to legal fees. MF Nevada—a small, local company with one full-time employee—estimates the total cost of responding to the Original Subpoena to be approximately \$12,000. This is a major burden for a small company. *See* Amunategui Declaration at ¶¶ 5-6.

17. Furthermore, the New MF Subpoena and the Amunategui Subpoena will require even more time and expense. Both subpoenas request documents relating to 253 entities for which MF Nevada has acted as resident agent, plus individuals and nominee manager services: almost double the Original Subpoena. Moreover, they request extensive communications

1 between MF Nevada and its chief client, Mossack Fonseca, without reference to content or  
2 timing. There is, in effect, no limit to the universe of documents NML has requested. It  
3 essentially requests every document MF Nevada has or might have in its possession, relating to  
4 every entity it has ever formed, and then ask Ms. Amunategui to appear at a deposition to discuss  
5 them. This is too broad and too burdensome for this Court to tolerate. *See Convolv, Inc. v.*  
6 *Dell, Inc.*, Case No. C 10-80071, 2011 U.S. Dist. LEXIS 53641, at \*6-7 (N.D. Cal. May 9, 2011)  
7 (“Non-parties may occasionally have to testify and give evidence, but non-parties should not be  
8 burdened in discovery to the same extent as the litigants themselves. Requests to non-parties  
9 should be narrowly drawn to meet specific needs for information.”) (citing *Katz v. Batavia*  
10 *Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed. Cir. 1993); *see also Michael W.*  
11 *Dickinson, Inc. v. Martin Collins Surfaces & Footings, LLC*, Case No. 5:11-cv-281-JMH, 2012  
12 U.S. Dist. LEXIS 166751 (E.D. Ky. Nov. 20, 2012) (“While it may be true that post-judgment  
13 discovery has a broad scope, it has its limits. . . . This threshold showing [of relationship with the  
14 judgment debtor] is necessary because the interest of third parties in their privacy must be  
15 balanced against the need of the judgment creditor to the documents in question.”) (internal  
16 citations omitted).

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20 18. Additionally, by subjecting MF Nevada to ongoing and unlimited inquiry into its  
21 business practices and client relationships, the subpoenas have impact beyond the immediate cost  
22 of compliance. MF Nevada reports that its business has suffered due to these subpoena efforts  
23 and the strain they place on its relationship with its chief client, the Mossack Fonseca law firm.  
24 *See Amunategui Declaration at ¶ 7.* These subpoenas will continue to do MF Nevada irreparable  
25 harm if they are allowed to continue.

26  
27 19. In short, these subpoenas mirror the discovery requests and subpoenas that the  
28 Ninth Circuit addressed in *Premium Service Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225

1 (9th Cir. 1975). There, the court affirmed an order by the lower court quashing a subpoena  
2 where the “requests for documents were sweeping in nature, covering every paper touching on  
3 any relationship between [the defendant, the third-party deponent, and its director] personally.”  
4 *Id.* at 229. The court noted that “[c]ompliance [with the subpoena] would have required  
5 extensive sifting and analysis by [the third-party deponent’s] employees” and that requiring the  
6 third-party deponent to ignore the sifting and just produce a mass of documents would itself be  
7 unreasonable and burdensome. *Id.* “[N]o company,” the Ninth Circuit recognized “would  
8 permit another company to go on a fishing expedition through its records.” *Id.*

10 20. This is, of course, exactly what NML would have this Court permit. The  
11 subpoenas in this case are indisputably a fishing expedition, and unapologetically so. When  
12 asked to tailor requests or restrict the requests to the most important documents, counsel for  
13 NML indicated that it could not know what documents were important, until it had the universe  
14 of documents before it. *See Woods Declaration at ¶ 26.* This is not permissible under the  
15 discovery standards for third-parties. *See Convolv, Inc. v. Dell, Inc., supra* (requiring that  
16 requests to third-parties involve only specific requests for important information).

19 21. Here, the relationship between the third-party deponent and the parties to this case  
20 is even more tenuous than in the *Premium Service* case or the *Convolv* case cited above. NML  
21 has not alleged that there is any connection between MF Nevada and Ms. Amunategui and the  
22 target of their investigation, Lazaro Baez. The only connection is that Ms. Amunategui and MF  
23 Nevada act as registered agent for companies that share a nominee manager with one entity  
24 named in a report. Requiring extensive compliance under these circumstances is just the sort of  
25 harm that the *Premium Service* court declined to permit and that the Federal Rules of Civil  
26 Procedure forbid. *See Fed. R. Civ. P. 45* (“A party or attorney responsible for issuing and  
27 serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a  
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1 person subject to the subpoena.”). This Court should follow suit by quashing the New MF  
2 Subpoena and the Amunategui Subpoena.

3 22. Moreover, MF Nevada has already complied with one subpoena in this case,  
4 despite its status as a non-party and the breadth of that subpoena. It willingly complied with its  
5 obligations under the law, despite the burden and effect on its business. To permit a second and  
6 a third subpoena, greatly expanded in scope, compounds the burden on the company needlessly.  
7 This alone is sufficient grounds to quash the subpoenas. *See Convolv, Inc. v. Dell, Inc., supra*  
8 (finding multiple subpoenas to be unduly burdensome as to a non-party).  
9

## 10 **2. The Subpoenas Do Not Permit Reasonable Time to Comply**

11 23. Even disregarding their extensive scope, the New MF Subpoena and the  
12 Amunategui Subpoena do not permit reasonable time to comply. They request that Ms.  
13 Amunategui appear at a deposition on July 28, 2014 and to provide documents on or about July  
14 20, 2014. Under the circumstances, this is not sufficient time to comply.  
15

16 24. On May 17, 2014, Ms. Amunategui was seriously injured in an accident involving  
17 a recreational vehicle. Due to her injuries, she has been prescribed hydrocodone and has been  
18 ordered to work no more than four hours per day by her doctor for a period of time extending  
19 from June 20, 2014 to August 1, 2014. Four hours of work per day does not afford sufficient  
20 time to gather the documents responsive to the subpoenas, produce them, prepare for a  
21 deposition, and sit for a deposition, in addition to customary and routine duties. *See Amunategui*  
22 *Declaration at ¶¶ 8-9.* Additionally, taking powerful pain medication will limit Ms.  
23 Amunategui’s ability to give meaningful testimony. *See id.*  
24

25 25. Counsel was informed of Ms. Amunategui’s injury shortly after it occurred, so  
26 that the parties could cooperate on scheduling. *See Woods Declaration at ¶ 19.* Moreover,  
27 counsel for NML observed Ms. Amunategui at court proceedings wearing a back brace. *See*  
28

1 Amunategui Declaration at ¶ 10. Nevertheless, NML proceeded to subpoena Ms. Amunategui  
2 personally, on no notice to counsel, and shifted the burden to her to prove her injury, naturally,  
3 through an additional demand for documents. *See Woods Declaration* at ¶¶ 23, 27.

4 26. Based on the circumstances, even if this Court should decline to limit or quash the  
5 subpoenas, this Court should issue a protective order that requires production of documents—  
6 however limited—no sooner than August 30, 2014 (i.e., thirty days from the date Ms.  
7 Amunategui is permitted to resume full-time work) and a deposition to occur sometime  
8 afterward at a mutually convenient date.

10 **3. The Subpoenas Should Be Quashed As They Demand Personal and Confidential**  
11 **Material**

12 27. The document requests included in the Subpoena contain specific requests for  
13 internal documents of MF Nevada, specifically documents governing its relationship with its  
14 client, Mossack Fonseca, and its employee, Ms. Amunategui. Additionally, they seek documents  
15 that are inherently confidential, as they in effect request documents regarding Mossack  
16 Fonseca’s downstream clients, who may or may not have any connection with the underlying  
17 litigation whatsoever and that in any event will be governed by the attorney-client privilege  
18 between Mossack Fonseca and its clients. MF Nevada’s relationship to its own client—Mossack  
19 Fonseca—and employees are not only irrelevant to these proceedings but also constitute  
20 confidential information.

23 28. Rule 45(d)(3)(B) authorizes this Court to quash a subpoena if it requires  
24 “disclosing a trade secret or other confidential research, development, or commercial  
25 information.” *Id.* When proprietary commercial information is demanded by subpoena of a non-  
26 party, the scope of discovery not only must be relevant, but also must be supported by a required  
27 showing of the proponent’s substantial need for the information and the inability to obtain the  
28

1 same information from other sources. *See* Fed. R. Civ. P.45(d)(3)(C) (“the court may . . . order  
2 appearance or production under specified conditions if the serving party (i) shows a substantial  
3 need for the testimony or material that cannot be otherwise met without undue hardship; and (ii)  
4 ensures that the subpoenaed person will be reasonably compensated.”)

5         29. Among its extensive demands, NML seeks testimony and documents pertaining to  
6 MF Nevada’s business plans, processes, client and employee identifications, and employee  
7 remuneration. Such information is confidential and proprietary to an active business, such as MF  
8 Nevada, and constitutes its trade secrets. If disclosed, such information will jeopardize MF  
9 Nevada’s relationship with its client, Mossack Fonseca, which would result in substantial  
10 economic harm. *See Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697 (D. Nev.  
11 1994) (“Confidential commercial information is information which, if disclosed, would cause  
12 substantial economic harm to the competitive position of the entity from whom the information  
13 was obtained.”). Mossack Fonseca has already begun restricting its willingness to engage MF  
14 Nevada and use Nevada entities, in part because it cannot ensure that outsiders with no relation  
15 to the clients will not obtain confidential client information, in part due to the subpoenas in this  
16 case. *See Amunategui Declaration at ¶ 7.* Doing so has caused and will continue to cause  
17 substantial economic harm to MF Nevada.  
18

19         30. Moreover, NML cannot show that it requires this information for the purposes of  
20 its underlying litigation or that it cannot have access to this information through other sources.  
21 As noted above, the only relationship that MF Nevada and its employee have to this case is that  
22 they act as registered agent for companies that share a nominee director with one other entity that  
23 may or may not have a relationship to the litigation. Requiring disclosure of confidential  
24 information and inviting economic harm based on this connection is too tenuous to be supported.  
25 Moreover, NML may have access to this information by subpoenaing entities more closely  
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28

1 aligned with the events of this case, such as the nominee manager itself, Aldyne Ltd., or Mossack  
 2 Fonseca, in their home jurisdictions.

3 **4. The New MF Subpoena Should Be Quashed to the Extent it Attempts to**  
 4 **Characterize MF Nevada as Agent for Mossack Fonseca & Co. or to Obtain**  
 5 **Service of Process over Mossack Fonseca & Co.**

6 31. As indicated above, the New MF Subpoena inexplicably attempts to depose MF  
 7 Nevada “as Agent for Mossack Fonseca & Co.” a law firm based in the Republic of Panama.  
 8 The New MF Subpoena should be quashed or clarified to the extent that it asserts the presence of  
 9 a relationship between MF Nevada and Mossack Fonseca that simply does not exist. Doing so  
 10 appears to be an attempt to circumvent applicable rules and treaties governing service of process  
 11 by United States courts vis-à-vis Panamanian entities. *See* Inter-American Convention on  
 12 Letters Rogatory, Organization of American States, Art. 5-8 (requiring specific procedures for  
 13 service of process for countries party to the Convention, including legalization by consular and  
 14 diplomatic agents and detailing documents to be included); *see also R. Griggs Group Ltd. v.*  
 15 *Filanto Spa*, 920 F. Supp. 1100, 1102 (D. Nev. 1996) (domestic service of process on  
 16 representative of Italian corporation at trade show was ineffective under the Hague Convention  
 17 absent showing that served person is an officer, director, employee, managing agent, or general  
 18 agent of the foreign entity); *Orlich v. Helm Bros., Inc.*, 560 N.Y.S.2d 10 (N.Y. App. Div. 1990)  
 19 (when discovery is sought from a non-party in a foreign jurisdiction, application of the Hague  
 20 Convention, which encompasses principles of international comity, is virtually compulsory).  
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23 32. As indicated above, MF Nevada provides services to Mossack Fonseca but does  
 24 so merely as an independent contractor. *See* Amunategui Declaration at ¶ 4. It is not a  
 25 subsidiary—wholly owned or otherwise—of Mossack Fonseca & Co. such that it can be  
 26 considered an agent for service of process involuntarily. *See Volkswagenwerk Aktiengesellschaft*  
 27 *v. Schlunk*, 108 S.Ct. 2104 (1988). Counsel for NML has been advised of this fact. *See Woods*  
 28

1 Declaration at ¶ 22, Exhibit E. As noted above, however, counsel for NML have been unwilling  
2 to indicate whether or to what extent the New MF Subpoena purports to request documents  
3 directly from MF Nevada. *See* Woods Declaration at ¶ 25. The New MF Subpoena should be  
4 quashed or limited on these grounds.

5 33. Moreover, to the extent that the Subpoena seeks production from Mossack  
6 Fonseca, the New MF Subpoena demands compliance by an entity whose principal place of  
7 business is located more than 100 miles from this Court. *See* New MF Subpoena (directing  
8 compliance by Mossack Fonseca & Co., located at “54<sup>th</sup> Street, Marbella, Panama, Rep. of  
9 Panama”). This violates the territorial limits of this Court’s subpoena power. *See* Fed. R. Civ. P.  
10 45(c) (“A subpoena may command a person to attend a . . . deposition only . . . within 100 miles  
11 of where the person resides, is employed, or regularly transacts business in person. . . . A  
12 subpoena may command . . . production of documents . . . at a place within 100 miles of where  
13 the person resides, is employed, or regularly transacts business in person . . .”). Thus, even if  
14 MF Nevada were a managing or general agent of Mossack Fonseca, the New MF Subpoena  
15 would be improper.  
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19 34. If NML wants documents or attendance at a deposition from Mossack Fonseca, it  
20 is not without recourse. Rather than ask this Court to extend its territorial jurisdiction to another  
21 country thousands of miles away, NML may simply serve Mossack Fonseca in Panama,  
22 according to applicable international law. The law of this Court is very clear that where  
23 applicable international agreement provides an appropriate procedure, the entity serving process  
24 must comply with that law. *R. Griggs Group Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1102 (D.  
25 Nev. 1996) (domestic service of process on representative of Italian corporation at trade show  
26 was ineffective under the Hague Convention absent showing that served person is an officer,  
27 director, employee, managing agent, or general agent of the foreign entity). Subpoenas among  
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1 entities are governed by the Inter-American Convention on Letters Rogatory, to which both  
 2 Panama and the United States are parties. *See* Inter-American Convention on Letters Rogatory,  
 3 Organization of American States, Art. 5-8 (requiring specific procedures for service of process  
 4 for countries party to the Convention, including legalization by consular and diplomatic agents  
 5 and detailing documents to be included).

6  
 7 35. At the same time, Mossack Fonseca does not appear to have any contacts with  
 8 this jurisdiction whatsoever, beyond engaging an independent contractor to form and maintain  
 9 entities for its downstream clients. A search of publicly available records revealed no property  
 10 here held by Mossack Fonseca, no registration to do business, and no public filings or other  
 11 connections to this jurisdiction. *See* Woods Declaration at ¶ 31. Accordingly, Mossack Fonseca  
 12 has no contacts with this state sufficient to subject it to jurisdiction by this Court. *See Walden v.*  
 13 *Fiore*, 134 S.Ct. 1115 (2014) (addressing minimum contacts analysis under Nevada’s long-arm  
 14 statute).

15  
 16 **5. NML Must Be Ordered to Pay MF Nevada’s Costs and Fees in Bringing This**  
 17 **Motion**

18 36. Federal Rules of Civil Procedure 45 authorizes the award of fees in the event of a  
 19 party’s failure to reasonably avoid imposing undue burden or expense on a non-party. The New  
 20 MF Subpoena and the Amunategui Subpoena—and, to a lesser extent, the Original Subpoena—  
 21 fail to comply with applicable rules because they are unreasonably burdensome and extensive, on  
 22 their face. *See Watson v. State*, Case No. CV-04-16-H-CSO, 2006 U.S. Dist. LEXIS 55206, at  
 23 \*7 (D. Mont. July 27, 2006) (awarding fees where “a mere moment’s reflection would have  
 24 revealed that the subpoenas were unduly burdensome and even a cursory reading of the  
 25 governing rule would have revealed that the subpoenas were procedurally defective for multiple  
 26 reasons); *see also Polo Bldg Group, Inc. v. Rakita (In re Shubov)*, 253 B.R. 540, 547 (B.A.P. 9th  
 27  
 28

1 Cir. 2002) (“When a subpoena should not have been issued, literally everything done in response  
2 to it constitutes ‘undue burden or expense’ within the meaning of Civil Rule 45(c)(1).” Here, the  
3 subpoenas should never have been issued, particularly given the circumstances and MF Nevada’s  
4 earlier compliance and willingness to provide information informally. Accordingly, despite  
5 whether the subpoenas were issued “in good faith,” a fee award is appropriate. *See Watson*,  
6 2006 U.S. Dist. 55206 at \*5-6 (“Under Rule 45, an attorney has the same authority to issue  
7 subpoenas as does the Clerk of the Court. As an officer of the court, however, an attorney also  
8 has an ‘increased responsibility and liability for the misuse of this power.’”) (citing *Productos*  
9 *Mistolin, S.A. v. Mosquera*, 141 F.R.D. 226, 228 (D.P.R. 1992); *see also Highland Tank & Mfg.*  
10 *Co. v. PS Int’l, Inc.*, 227 F.R.D. 374, 380 (W.D. Pa. 2005). Additionally, NML’s refusal to tailor  
11 its requests more narrowly or to identify the most important requests shows an absolute disregard  
12 for its obligation to minimize burden on non-parties. Finally, NML’s conduct in refusing to  
13 accept reasonable offers to engage in informal or alternative discovery demonstrates a continuing  
14 ongoing refusal to ameliorate the harm to MF. An award to MF Nevada of the fees and costs  
15 incurred in bringing this motion is proper.  
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### 19 Conclusion

20 There can be no question about the undue burden imposed by the subpoenas issued in this  
21 case against MF Nevada and Ms. Amunategui, both non-parties. Nor can there be any genuine  
22 dispute that the information sought is far-reaching in scope and intrusive on ordinarily  
23 confidential business information. To date, MF Nevada has complied in good faith with its  
24 obligations under the Subpoena and has even asked NML to provide more specificity so that it  
25 can adequately respond. It has offered to engage in non-judicial discovery and to continue to  
26 provide information. None of this has been enough. The only response has been more  
27 subpoenas, more burden, and more expense. This Court should quash the New MF Subpoena  
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1 and the Amunategui Subpoena in all respects. If any discovery is permitted, which should not be  
2 the result, then this Court should strictly curtail the extremely broad demands, NML should pay  
3 all costs of compilation and copying of any materials allowed to proceed, should compensate MF  
4 Nevada for its expenses, attorney fees, and lost productivity with respect to the subpoenas.  
5 Moreover, NML should be compelled to pay MF Nevada's and Ms. Amunategui's expenses  
6 incurred in bringing this Motion.  
7

8 WOODS ERICKSON & WHITAKER LLP  
9

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